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IN THE

# Supreme Court of the United States

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF MULTIJURISDICTION PRACTICE (NAAMJP) ET. AL.,
PETITIONERS,

*v.*

ALBERTO R. GONZALES, ANTHONY J. SCIRICA, CHIEF JUDGE OF THE THIRD CIRCUIT JUDICIAL COUNCIL ET. AL.,
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## PETITION FOR REHEARING AND WRIT OF CERTIORARI

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**1. This Court Should Grant Certiorari Because of a Self-Admitted Constitutional Crisis**

The Honorable Chief Justice John G. Roberts, Jr. in his January 1, 2007 Year End-Report on the Federal Judiciary has emphatically stated (if not shouted) that the failure to raise judicial pay has been ignored far too long and has now reached the level of a constitutional crisis that threatens to undermine the strength and integrity of the federal judiciary. Justices of this Court have recently testified and complained before Congress their clerks after one term earn far more than they do.

The American Bar Association, as set forth in the Petition for Certiorari, has further declared that the "local" attorney admission rules here challenged, in this global world of law practice are anticompetitive, they drive-up the costs of litigation, interfere with the right to counsel, and injure the reputation of the bench and bar. The American Bar Association recommended over 12 years ago that the challenged local rules **should be eliminated**. The Reporter for the American Law Institute over 20 years ago has characterized the challenged "local" rules as the product of **petty medieval fiefdoms**. The United States Judicial Council has characterized these challenged local rules as a "**minefield of inconsistency**."

The ABA understands and has recognized a constitutional crisis in access to the Courts. This is the reason for its MJP Commission. The ABA MJP Commission, "RESOLVED, that the American Bar Association adopts the proposed Model Rule on Admission by Motion, dated August 2002. (72a-81a) This Court, by refusing to exercise its supervisory responsibility and denying certiorari, has ignored a constitutional crisis in access to the Courts and ignored the ABA recommendations that have been endorsed by the Conference of Chief Justices and adopted by 35 states.

Many people cannot afford to hire lawyers. There is a correlation of supply with demand, and the federal district

court "local" rules and minefield of red tape have given local lawyers monopoly protection.

In the human body, every cell's existence depends on the proper functioning of every other cell. Every cell receives oxygen and food and excretes waste products by the blood stream. Every cell relies upon the same functional interlinked organs and immune system. Every cell's existence, regardless of its function, has the same chromosomes and DNA. At the molecular, chemical, and functional design level every one of us is the same. Science has confirmed the self-evident truth pronounced in the Declaration of Independence that all men are created equal, and the function of republican government is to promote the citizens' liberty and happiness.

It is well known eating too much fat clogs the arteries and can lead to death. Our body politic is composed of Americans with the same needs. The life blood in the body politic is the First Amendment freedoms and unimpeded access to independent federal courts. These freedoms keep the body politic healthy. The challenged local federal district court attorney admission rules clog our arteries. They clog the exercise of the First Amendment freedom. These local rules are analogous to a part of the body, saying to the rest of the body — blood and immune T-cells from other parts of my body are not needed. Local attorneys are encouraged by local rules to grow fat at the expense of the overall health of the body.

It discredits the integrity of this Court to complain about its pay package and constitutional crisis on the one hand, and do nothing as a supervisor on a Petition for Certiorari that asserts the challenged local federal rules provide monopoly protection and drive-up the cost of litigation in the federal district courts.

In general, the denial of certiorari does not constitute an expression of any opinion on the merits. Rasul v. Bush, 542 U.S. 466, 480-71 (2004). A constitutional supervisor, however, who does nothing in the face of a minefield of discrimination in the exercise of federal rights, ratifies that

conduct by silence. This Court's denial of certiorari in this Class Action constitutes an expression of a favorable opinion on the merits because of this Court's supervisory responsibility, and because the non-published decision restrains the petitioners from again raising these issues in any United States District Court.

Under the present local rule scheme challenged in this case, all licensed American attorneys are not created equal. The core principle that led to the formation of our "more perfect Union," that there shall be no taxation without representation —has been discarded by local rules. Petitioners pay taxes to support the federal judiciary, and the local rules deny them the freedom to represent their clients in whatever forum representation is needed. It is no wonder there is a constitutional crisis. There are hundreds of death sentenced prisoners that do not have lawyers to represent them for their post conviction proceedings. The Legal Aid Services, in a national study titled "Documenting the Justice Gap in America," reports that legal aid cannot meet the needs of 80% of the people that it serves. (31a) If this Court wants Congress to increase its pay, it should correspondingly grant review and decrease the exorbitant costs to American taxpayers to retain qualified counsel and petition the federal district courts for the redress of grievances.

2. **This Court Should Exercise its Supervisory Responsibility and Grant Certiorari Because the Decisions Below Are the Product of an Emotional Hijacking that Discredits the Integrity of this Court**

Daniel Goleman received his Ph.D. from Harvard and reported on the brain and behavioral sciences for the *New York Times* for 12 years. He has been awarded the American Psychological Association's Lifetime Achievement Award. In his number 1 bestseller, Emotional Intelligence (Bantam 1995), Dr. Goleman writes, "The emotional mind, however, takes its beliefs to be absolutely true, and so discounts any evidence to the contrary. That is why it is so hard to reason

with someone who is emotionally upset: no matter what the soundness of your arguments from a logical point of view, it carries no weight if it is out of keeping with the emotional conviction of the moment. Feelings are self-justifying with a set of perceptions and 'proofs' all their own." Id. at 295. "Our emotional minds will harness the rational mind to its purposes, so we can come with explanations for our feelings and reactions — rationalizations —justifying them in terms of the present moment, without realizing the influence of the emotional memory. In that sense, we can have no idea of what is actually going on, though we may have the conviction of certainty that we know exactly what is happening." Id. at 296.

The "Not Precedential" Class Action decisions below are the product of an emotional hijacking because the Courts below were angry at the petitioners for challenging their local rules. The Court's local rules for attorneys are a taboo subject. The telltale signs of this emotional hijacking are self-evident and include the failure of the Courts below to disclose, analyze, or weigh:

- The American Bar Association Recommendation that the challenged local rules **should be eliminated**; The Reporter for the American Law Institute's characterizing the challenged local rules the product of **petty medieval fiefdoms**; The American Bar Association adopting a Model Rule for Admission on Motion that has been adopted in 35 states; the Judicial Conference Report calling the "local" attorney admission rules a "**minefield of inconsistency**;" The Conference of Chief Justices endorsing admission on motion.
- The American Bar Association has concluded that experienced attorneys who have practiced successfully for four years do not need to take an "entry level" bar exam to practice in

another jurisdiction, especially in the federal courts.

- The 25 exhibits petitioners submitted as evidence without objection;
- The 27,255 "mainstream" attorneys admitted on motion to multiple States that were categorically disqualified for *general* admission petition privileges to the bar regardless of individual merit, under the restrictive "local" rules of the respondent United States District Courts for the Districts of New Jersey and California.
- The admitted California law firm partner profits in excess of $1,000,000 per year. (31a)
- Rand Corporation statistical evidence that the entirely subjective California bar exam given to experienced attorneys is less reliable than flipping a coin. (30a)
- Declarations under oath from former Presidents of the Pennsylvania State Bar that the challenged local federal district court rules injure the public. (30a)
- Dr. Klein controlled experimental tests that demonstrate that laymen are better judges of competence than licensing officials. (32a)
- "A National Action Plan on Lawyer Conduct and Professionalism" (Adopted by the Conference of Chief Justices January 21, 1999), that declares "National legal practice in multiple jurisdictions increasingly is the rule rather than the exception, particularly given improvements in communication and transportation technology." (33a-35a).
- Standards for Educational and Psychological Testing, (Published by the American Educational Research Association, American Psychological Association, National Council

on Measurement in Education, 2d Ed. 2004). The federal government, including the Department of Justice, has recognized these Standards as generally accepted and authoritative. See 29 C.F.R. § 1607.5C.; and the argument these challenged local rules that "piggy-back" state admission rules that have nothing to do with federal law (such as the petitioners' specialty in patents, immigration, bankruptcy, and federal sentencing) violates those Standards.

- The Department of Justice Petition on Behalf of the United States of America to the Arizona Supreme Court for Admission on Motion;
- This Court's holding that an attorney's opportunity to practice law is a fundamental right protected by the Constitution because out-of-state licensed attorneys have a constitutional duty to champion locally unpopular claims and vindicate federal rights. Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 281 (1985).
- This Court's judgment "that most states that have put up fences against out-of-state attorneys have done so primarily to protect their lawyers from professional competition". Supreme Court of New Hampshire v. Piper, 470 U.S. at fn. 17.
- This Court 's holding state bar admission on motion rules cannot discriminate against out-of-state attorneys. Supreme Court of Virginia v. Friedman, 487 U.S. 59, 67 (1988).
- This Court's holding that the right to petition is one of "the most precious of the liberties safeguarded by the Bill of Rights." BE & K Construction Co. v NLRB, 536 U.S. 516, 524 (2004) "The First Amendment historically

provides greater protection from prior restraints than after-the-fact penalties, and enjoining a lawsuit could be characterized as a prior restraint." Id. at 530. Yet, the behind closed door decisions below restrains petitioners from filing any future challenges to local rules in the United States District Courts.

- This Court's holding a law is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content or subject matter of their speech. Simon & Schuster v. Crime Victims Bd., 502 U.S. 105 (1991).
- This Court's holdings that a regulation that denies one group of citizens the right to address a selected audience on controversial issues of public policy is plainly "viewpoint discrimination," in violation of the First Amendment. Consolidated Edison Co. v. Public Serv. Comn'n, 447 U.S. 530, 546 (1980).
- Petitioners argument that the local rules that delegate to state licensing officials unbridled discretion over experienced federal practice attorneys as to who may speak and who may not on federal law subjects (such as patents, immigration, bankruptcy, and federal sentencing) these official know nothing about is "content discrimination."
- There has never been any published decision by this Court on the precise legal arguments presented in this case under the Rules Enabling Act as amended in 1988, the First Amendment, or the Supremacy Clause.

Dr. Goleman's conclusion the emotional mind is not subject to rational argument no matter how sound is aptly

demonstrated here. The Courts below ignored 25 exhibits and this Court's precedent argued here.

The Court in Loving v. Virginia 385 U.S. 1 (1967) struck as unconstitutional miscegenation laws in 15 states that outlawed marriage between blacks and whites. This Court was not afraid to strike at the then ultimate taboo. This Court illustrated the highest attributes of Homo sapiens, the thinking species. Petitioner attorneys are today's taboo. While marriage is not mentioned in the Constitution, the right to petition the federal government is categorically safeguarded as is the right to counsel.

These emotional and irrational decisions below concern local rules that abort the sacred freedoms to free speech, expressive association with counsel, and to petition the federal Government for the redress of grievances. These decisions below are the product of an outdated habit of mind that had its heyday in the separate but equal era. This Court should thus exercise its supervisory responsibility because the irrational and emotionally based behind closed doors decisions below will stain the integrity of this Court if review is not granted.

3. **This Court Should Grant Rehearing and Certiorari Because the Decisions Below Constitute Government Censorship and Create the Public Appearance of Supreme Court Supervisory Negligence**

The decisions below constitute pure government censorship in a public forum on several fronts. There is presently an appearance that this Court, by refusing to exercise its supervisory responsibility, and provide a public forum for the issues presented, is ratifying that censorship. Not unlike the dictum about Caesar's wife being above reproach, this Court has often stated that the public appearance of justice is as important as justice itself.

Initially, the challenged local rules constitute censorship per se. "Enjoining a lawsuit could be characterized as a prior restraint." BE & K Construction Co.

v NLRB, supra, 536 U.S. 516, 530 (2004). As famously stated by the eminent humanitarian Justice Robert Jackson, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." Board of Education v. Barnette, 319 U.S 624, 638 (1943). "But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." Ibid. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." Ibid.

The challenged "local" disparate attorney federal district court admission rules undermine the very principles the Court is supposed to apply. **This Supreme Court and the United States Courts of Appeal do not have disparate and unequal attorney admission rules**. The "local" district court challenged rules by definition, in those federal district courts that practice discrimination, are adopted by the vote of the majority of the judges in a district. These district judges voted on their "local" rules on who may exercise national rights such as free speech and the right to petition secured by the Bill of Rights. This vote contradicts the "fixed star in our constitutional constellation" that no official can by majority vote force orthodoxy on American citizens in matters of politics, opinion, or rights protected by the First Amendment. The local rules, in sum, are a textbook prior restraint on the First Amendment freedoms.

Likewise, the First Amendment attempts to secure "the widest possible dissemination of information from

diverse and antagonistic sources." New York Times v. Sullivan, 376 U.S. 254, 266 (1964). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." Id. at 276. The local rules undermine core First Amendment principle that debate on public issues should be uninhibited and wide open.

As famously stated by Justice Holmes, "(W)hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas." Abrams v. United States, 250 U.S. 616, 630 (1919).

The Courts below apparently do not want see or hear that the American Bar Association has recommended the challenged rules serve no legitimate public purpose and **should be eliminated**; or they are the product of **medieval petty fiefdoms**; or they constitute a **minefield of inconsistency**; or that the First Amendment specifies a categorical right to petition the federal government. The decisions below punish petitioners for advocating recommendations propounded by the American Bar Association. Now is the time for this Court to address these issues once and for all. Supervisory acquiescence in this disparate treatment reflects adversely on the integrity of this Court.

Dated: May 18, 2007

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## CERTIFICATION OF COUNSEL FOR REHEARING

Counsel hereby certifies this petition is presented in good faith and not for delay. The ground for rehearing is a self-admitted constitutional crisis that undermines access to the federal courts and the strength and integrity of the federal judiciary that has been ignored far too long, and people's collateral corresponding right to petition the government for the redress of grievances. This Court's decision denying certiorari in light of its supervisory responsibility creates the appearance of affirming the challenged minefield on inconsistent local rules on the merits, and it discredits the integrity of this Court to do nothing as a supervisor in the face of a minefield of inconsistency and an admitted constitutional crisis in access to the federal courts. This Court's denial of rehearing further creates the appearance to the public at large that it is endorsing government censorship and prior restraints on the First Amendment rights to petition.

May 18, 2007

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Joseph Robert Giannini